

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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CLERK, U.S. DIST. COURT
ST. PAUL, MN

PUBLIC RECORD MEDIA, LLC,
2375 University Avenue W., Suite 200
Saint Paul, MN 55114,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001,

Defendant

Civil Action No. 12-1225 MJD/AJB

COMPLAINT

1. Plaintiff Public Record Media, LLC ("Plaintiff") brings this action against Defendant United States Department of Justice ("Defendant") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 *et. seq.* ("FOIA"). Plaintiff is seeking the production of records improperly withheld by Defendant in response to requests properly made by Plaintiff, relating to the projection of lethal force by the United States Government via the use of unmanned aerial vehicles ("UAVs") against persons located within United States jurisdictions, and alleges as follows:

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552 (a)(4)(B) and 28 U.S.C. § 1391(b)(3).

SCANNED

MAY 22 2012

U.S. DISTRICT COURT ST. PAUL

Jb/K

PARTIES

4. Plaintiff is a limited liability company organized under the laws of Minnesota, and has its principal place of business at 2375 University Avenue W., Suite 200, Saint Paul, Minnesota 55114. Plaintiff produces television and radio documentaries, and publishes news articles on public affairs issues. Plaintiff frequently employs state and federal public record laws, including the FOIA, to procure government documents in the course of producing documentaries and articles. In the public interest, Plaintiff makes documents procured through the FOIA and other public record laws available to the public at no charge on its web site, www.publicrecordmedia.com.

5. Defendant is an agency of the United States Government and is headquartered at the U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is an agency within the meaning of 5 U.S.C. § 552(f)(1).

STATEMENT OF FACTS

6. According to numerous press reports, since at least 2002, the United States Government has employed armed UAVs in operations carried out beyond the physical boundaries of the United States, including missile attacks against various personnel and material targets around the world. *See* "Drone Wars: Armed Unmanned Aerial Vehicles," *International Affairs Review*, Winter 2010 for a representative sample of such media coverage.

7. On several occasions officials of the United States Government, including President Barack Obama and Attorney General Eric Holder, have publicly acknowledged

the use of armed UAVs, and have spoken about various aspects of UAV operations. *See* “Obama Admits Use of Drones in Pakistan,” *The Independent*, February 01, 2012, and “U.S. Defends Killing of Americans Who Join Al Qaeda,” *Reuters*, March 5, 2012. As of the date of this writing, Attorney General Holder is the executive in charge of the Defendant agency.

8. According to numerous press reports, the United States Government has also used armed UAVs to attack and kill U.S. persons located outside of the physical boundaries of the United States on at least two occasions. *See* “Drone Strike on Two Americans Raises Questions,” *The Associated Press*, September 30, 2011.

9. On information and belief, once used exclusively abroad by U.S. military and intelligence agencies, UAVs are now also being utilized within the physical boundaries of the United States by a variety of law enforcement and other public agencies. *See* “Predator Drones and Unmanned Aerial Vehicles (UAVs),” *New York Times*, March 20, 2012 for a representative sample of press coverage about this issue.

10. On October 11, 2011, Plaintiff sent a FOIA request to the Office of Legal Counsel, a component of the Defendant agency, seeking legal opinions and/or memoranda related to the projection of lethal force via the use of UAVs against U.S. persons both here and abroad. Specifically, Plaintiff’s FOIA request sought the following:

1. “Any and all legal opinions and/or memoranda produced by your office between January 1, 2007 and October 1, 2011 that deal with the use of lethal force by the United States against United States person Anwar al-Awlaki, or against any United States person using a substantially similar name, or against any United States person using the name ‘Anwar al-Awlaki’ as a pseudonym;

2. Any and all legal opinions and/or memoranda produced by your office between January 1, 2001, and October 1, 2011, that deal with the use of lethal force – including, but not limited to, the projection of lethal force via ‘unmanned aerial vehicles’ (UAVs) -- by the United States against United States persons physically located outside of any region under the jurisdiction of the government of the United States at the time that lethal force is or might be used;

3. Any and all legal opinions and/or memoranda produced by your office between January 1, 2001, and October 1, 2011, that deal with the use of lethal force by the United States via the use of UAVs, against any person physically located within any region under the jurisdiction of the government of the United States at the time that lethal force is or might be used.”

11. By letter dated November 3, 2011, Defendant denied Plaintiff’s FOIA request in its entirety. In relation to Item 1 of Plaintiff’s request, Defendant issued a so-called “Glomar” response, neither confirming nor denying the existence of responsive records. Defendant acknowledged the existence of other documents responsive to Items 2 and 3 of Plaintiff’s FOIA request, but refused production, invoking FOIA Exemption One, 5 U.S.C. § 552(b)(1), which protects classified information; FOIA Exemption Three, 5 U.S.C. § 552(b)(3), which protects information specifically exempted from disclosure by statute; and FOIA Exemption Five, 5 U.S.C. § 552(b)(5), which protects information that is privileged. Defendant’s letter included notification of Plaintiff’s right to file an administrative appeal within 60 days.

12. Within 60 days, on December 30, 2011, Plaintiff filed an administrative appeal with Defendant. Plaintiff’s appeal narrowed the scope of the documents that Plaintiff was seeking from Defendant, to all segregable material responsive to Item 3 of Plaintiff’s FOIA request (legal opinions and/or memoranda related to the use of lethal force via the use of UAVs against persons located within any region under the jurisdiction of the United States at the time that lethal force is or might be used).

13. Plaintiff delivered the administrative appeal via courier, instructing the courier to label the package "Freedom of Information Act Appeal" and deliver to Defendant at the address specified in Defendant's letter of November 3, 2011 (Office of Information Policy, Department of Justice, Flag Building, Suite 570, Washington DC 20530-0001). On December 30, 2011, Plaintiff received a signed confirmation of delivery.

14. On December 30, 2011, Plaintiff called the main telephone number for the Office of Information Policy ("OIP"), a component of the Defendant agency, and was informed that Plaintiff's administrative appeal had been received.

15. On April 24, 2012, Plaintiff contacted the OIP to inquire as to the status of Plaintiff's administrative appeal. An attorney with OIP notified Plaintiff via e-mail that the appeal had not been "routed" to OIP, and that the attorney would "walk (the appeal) over to the appeal intake people" at OIP.

16. On May 4, 2011, Plaintiff received a letter from Defendant which stated that Plaintiff's administrative appeal was received by the OIP of Defendant on April 24, 2012, and assigned number AP-2012-02076. Plaintiff has received no further correspondence from Defendant since this letter.

17. At least twenty days have passed since Plaintiff delivered its appeal to Defendant on December 30, 2011. At least twenty days have also passed since the OIP component of Defendant acknowledged receipt via telephone on December 30, 2011, and since the OIP component of Defendant later acknowledged in writing receipt of Plaintiff's appeal on April 24, 2012.

18. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted its administrative remedies.

CAUSE OF ACTION

19. Plaintiff realleges paragraphs 1 through 18 as if fully stated herein.

20. Defendant, as an agency subject to FOIA under 5 U.S.C. § 552(f), must release in response to a FOIA request any disclosable records -- or portions thereof -- in its possession at the time of the request, and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

21. Defendant has acknowledged possession of legal opinions and/or memoranda responsive to Item 3 of Plaintiff's FOIA request.

22. Defendant has improperly withheld responsive memoranda and/or legal opinions from Plaintiff under FOIA.

23. Even if parts of the legal opinions and/or memoranda are properly classified or otherwise subject to an exemption, Defendant has an obligation to redact non-public portions of the legal opinions and/or memoranda and release those portions that are public under the FOIA.

24. Defendant's failure to provide the material violates the FOIA. Plaintiff is entitled to the release and disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

25. Declare that the records requested by Plaintiff in Item 3 of its FOIA request are public under 5 U.S.C. § 552 and must be disclosed or, in the alternative,

conduct an in camera review to determine whether any parts of the requested records are properly public under the FOIA;

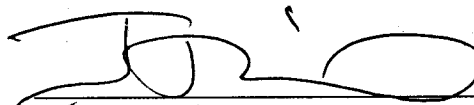
26. Order Defendant to produce, within twenty business days of this Court's Order, all non-exempt records responsive to Item 3 of Plaintiff's FOIA request and a *Vaughn* index of all responsive records withheld under the claim of exemption;

27. Enjoin Defendant from continuing to withhold non-exempt records responsive to Item 3 of Plaintiff's FOIA request;

28. Award Plaintiff its costs for this proceeding, including reasonable legal fees, as expressly permitted by the FOIA; and

29. Grant Plaintiff such other and further relief as the Court deems just and proper.

Dated: Saint Paul, Minnesota
May 22, 2012



Jonathan Haines
MN Attorney Number #303379
2375 University Avenue West
Suite 120
Saint Paul, MN 55114
Phone: 612-743-7781
jthaines@publicrecordmedia.com
Counsel for Plaintiff